

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

ANDREW MARTIN, *on behalf of himself
and all others similarly situated,*

Plaintiff,

v.

KHAYLIE HAZEL YEARNING LLC,

Defendant.

Civil Case No.: 3:22CV176-SA-JMV

CLASS ACTION

**PLAINTIFF’S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION FOR LEAVE TO
CONDUCT CLASS CERTIFICATION AND DAMAGES DISCOVERY**

Pursuant to the Court’s November 7, 2022 Order Requiring Supplemental Briefing [Dkt. No. 9], Plaintiff Andrew Martin (“Plaintiff”), on behalf of himself and the proposed classes, submits this Supplemental Memorandum of Law in support of his Motion for Leave to Conduct Class Certification and Damages Discovery. In support, Plaintiff states as follows:

I. BACKGROUND AND PROCEDURAL POSTURE

On October 21, 2022, Plaintiff filed his Motion for Leave to Conduct Class Certification and Damages Discovery. [See Dkt. Nos. 7-8.] On November 7, 2022, this Court issued an Order Requiring Supplemental Briefing. [See Dkt. No. 9 (the “Order”).] The Order directs Plaintiff “to provide the Court with an outline of the proposed discovery that it intends to seek from Defendant and/or its third-party agent on the issues of numerosity and damages” and “provide a timeline for discovery and the filing of any anticipated motions for class certification and default judgment.” [Id. at 2-3.]

II. OUTLINE OF PROPOSED DISCOVERY

Plaintiff intends to conduct discovery aimed at identifying the person(s) responsible for sending the text messages at issue, as described and depicted in the Complaint [*see* dkt. No. 1 at 3-19.]. Plaintiff must first identify the person(s) that sent the text messages so that Plaintiff may obtain a call log associated with such text messages from the sender of the messages. A call log will reveal the telephone numbers of potential class members and the number of text messages each potential class member received, which is relevant to damages.

Plaintiff intends to issue a Subpoena to Testify at a Deposition and to Produce Documents to Keisha Merrit, the Manager and incorporator of Defendant, Khaylie Hazel Yearning LLC. It is anticipated that Ms. Merrit will have knowledge of the identity of the person(s) or services that sent the text messages on behalf of Defendant as well as the relationship between Defendant and the various websites used to advertise Defendant's products that were linked to the text messages.

Plaintiff also intends to issue subpoenas to various third parties that may have knowledge of the identity of the person(s) that sent the text messages at issue. For example, Plaintiff intends to issue subpoenas to the domain registrars associated with numerous websites to obtain information related to the person(s) responsible for the various websites associated with the links contained in the text messages and the various links utilized to forward Plaintiff to the website "www.elitepowercbd.com."¹ Once identified, Plaintiff intends to issue subpoenas or seek discovery from such persons pertaining to the text messages. In addition, Plaintiff intends to subpoena his debit card service to obtain merchant information related to a transaction initiated on

¹ As explained in the Complaint, each text message contained a link, that when clicked redirected to another website that included links to the website "www.elitepowercbd.com." [*See* Dkt. No. 1 at 3-19.] Those websites include, but are not limited to: tastefiction.com, securedoctors.com, spearamount.com, athleticclothe.com, skillproverb.com, allianceendeavor.com, combatmetallic.com, cancerforbid.com, meannessbefore.com, breadcurb.com, texturesecrecy.com, judgmentcoast.com, hastenbrother.com, fastenspotted.com, sprinklecheck.com, clubantelope.com, regimenthanging.com. [*See id.*]

the website “www.elitepowercbd.com.” Further, Plaintiff intends to subpoena a third-party affiliate network, that upon information and good faith belief, has information relevant to the identity of the person(s) that sent the text messages at issue.

III. Timeline for Discovery and the Filing Motions for Class Certification and Default Judgment

Plaintiff respectfully seeks six months to conduct the above-described discovery. Plaintiff anticipates the need for multiple follow-up subpoenas based on the information provided by Ms. Merrit and/or returned from the third parties described above, such as the domain registrars. Plaintiff requests that his motion for class certification be due one month after the close of the discovery period and that his motion for default judgment be due one month after the court rules on Plaintiff’s motion for class certification.

IV. CONCLUSION

For the reasons set forth in Plaintiff’s Motion for Leave to Conduct Class Certification and Damages Discovery and this Supplemental Memorandum of Law, Plaintiff respectfully requests that the Court enter an Order as follows:

1. That Leave of Court is granted to conduct Class Certification and damages related discovery, including third-party discovery as necessary;
2. That the Court reserves jurisdiction on the issue of damages and to otherwise reserve ruling on a final damages determination; and
3. That Plaintiff be permitted to seek a default judgment, both as to the individual Plaintiff and the putative Classes, upon completion of Class Certification and damages discovery.

Dated: November 17, 2022

Plaintiff, by Counsel:

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(*pro hac vice* to be filed)